

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII, Rule 32 (2)(b))

Description of the case.

A.O. No. 488 of 2005

U.P. State Road Transport Corp.

Appellant

Versus

Ramesh Chandra Sharma & others

Respondents

Approved for reporting.

Not approved for reporting

Date of decision: 9.11. 2006

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 488 of 2005

U.P. State Road Transport Corporation, Meerut Region
through its Regional Manager..... Appellant

versus

1. Ramesh Chandra Sharma s/o Sri Arjun Singh R/o 449, Khurbura Mohalla, Dehradun
 2. Smt. Kusum Sharma w/o Sri Ramesh Chandra Sharma, 449, Khurbura Mohalla, Dehraun
 3. Oriental Insurance Co. Ltd. Divisional Office, Rajpur Road, Dehradun
 4. Subhash Chandra s/o Sri Banke Lal, Pawti Gaon, Police Station Garhmukteshwar, District Ghaziabad
- Respondents

Sri Kishor Kumar, Advocate on behalf of Sri Ramji Srivastava Advocate for the Appellant
Sri D. Barthwal and Sri L.K. Verma, Advocates for respondent no. 1 & 2
Sri M.K. Agarwal for Sri M.K. Goyal Advocate for respondent no. 3.

Dated: November 9, 2006

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Rajesh Tandon, J.

Hon. Rajesh Tandon, J.

- 1) This appeal has been preferred against the Award dated 30.7.2005, passed by the Motor Accident Claims Tribunal, Dehradun.
- 2) The claimants Ramesh Chandra and Smt. Kusum Sharma preferred a claim petition under section 166 of the Motor Vehicles Act, for the grant of compensation on account of the death of their son Rajiv Sharma in a motor vehicle accident. According to the claimants on the fateful day on 9.6.2003, their son Rajiv Sharma along with his friends was going to Dehradun

from Delhi by his Indica Car. As soon as they reached Roorkee-Delhi flyover, a bus belonging to the appellant Corporation No. UP 15 E-0420, which was, being driven rashly and negligently on the wrong side, dashed the car driven by Rajiv Sharma. The accident was head- on collision. The deceased sustained fatal injury and died instantaneously.

3) Opposite parties 1 and 2 Sri Subhash Chandra son of Sri Bankey Lal driver of the Bus and U.P. State Road Transport Corporation Respectively filed their joint written statement and submitted that the accident did not take place due to rash and negligent driving of the bus driver but at the time of accident the bus was overtaking a Buggi when the car came in front of the bus and collided with it. They alleged that the car driver was under intoxication and liquor was also kept in the car.

4) Respondent no. 3 the Oriental Insurance Company, in its written statement pleaded ignorance about the facts mentioned in the claim petition and submitted that the claim petition is liable to be dismissed.

5) In order to prove their case, the claimants have examined P.W. 1, Ramesh Chandra Sharma and P.W.2 Atul Birmani. The claimants have also filed copy of F.I.R. post mortem report, death certificate, technical inspection certificate of the car and copy of driving licence of the deceased. Opposite parties have examined D.W. 1 Subhash Chand, Driver of the bus in defence.

6) On the basis of the evidence adduced by the claimants, the Claims Tribunal has held that the accident had taken place due to rash and negligent driving of the Bus.

7) So far as the compensation is concerned the Tribunal has recorded a finding that at the time of accident the age of the deceased was 26 years. The Claims Tribunal on the basis of the

income tax return filed by the deceased held the annual income of the deceased at Rs.95,000/- and after deducting 1/3 of the amount i.e. Rs.32,000/- for self expenses of the deceased if he would have been alive, the annual dependency was held to be Rs.63,000/- per month. Considering the age of the mother of deceased a multiplier of 15 was taken and thus the amount of compensation was calculated as 9,45,000/-. A sum of Rs.2,000/- was awarded towards funeral expenses and Rs.2,500/- for the loss of estate. Thus a total amount of compensation of Rs.9,49,500/- was awarded to the claimants along with pendente lite and future interest at the rate of 6% per annum.

8) Learned counsel for the appellant has submitted that the Tribunal has erred in selecting the higher multiplier of 15 in assessing the compensation. He further argued that the amount of compensation paid to the claimants is excessive. In as much as from the income-tax return for the financial year 2002-03, the income of the deceased has been shown to be Rs.74,980/- but the Claims Tribunal has assumed the income as Rs.95,000/-, by adding Rs.20,000/- towards the possible increase in the income, which cannot be said to be justified.

9) We have perused the copies of income tax returns filed on record. In the year 2001-02, the total income of the deceased has been mentioned to be Rs.60,100/-, while the income for assessment year 2002-03 has been shown to be Rs.74,980/-. The accident took place on 9.6.2003. Thus for assessing the compensation, income of the deceased, on the date of the accident alone shall be taken into consideration. We have perused assessment for the year 2002-03, in which the income has been shown as Rs.74,980/- or Rs. 75,000/-. One third of the

income is deducted for the self expenses of the deceased and thus the annual dependency of the claimants on the income of the deceased comes to $75,000 - 25,000 = \text{Rs.}50,000/-$.

10) At the time of accident the age of the deceased was 26 years. P.W. 1 Ramesh Chandra Sharma has stated his age to be 50 years and the age of his wife Smt. Kusum Sharma as 46 years. Thus multiplier has to be selected considering the age of the claimants, the parents of the deceased in view of the principle of law led down in the case **U.P. State Road Transport Corporation vs. Krishna Bala and others, 2006 (64) ALR 771**. In this case the Apex Court has observed as under:

“The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalizing the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants whichever is higher) and by the calculations to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest.”

11) The Apex court in the case of **Municipal Corporation of Greater Bombay vs. Laxman Iyer and another, (2003) 8 SCC 731**, has held that, where the claimants are parents of the deceased, the multiplier should not be more than ten.

12) We deem it necessary to reproduce paragraph 12 of the Apex Court Judgment in that case:

“12. *Keeping in view the observations made by this Court in various cases, several other factors need to be taken note of.*

The deceased was unmarried. The contribution to the parents who had their separate earnings being employed and educated has relevance. The possibility of reduction in contribution once a person gets married is a reality. The compensation is relatable to the loss of contribution or the pecuniary benefits. The multiplier adopted by the Tribunal and confirmed by the High Court is certainly on the higher side. Considering the age of the claimants, it can never exceed 10 even by the most liberal standards. Worked out on that basis the amount comes to Rs 3.6 lakhs at the monthly expected income fixed by the Tribunal and confirmed by the High Court. Looking into the nature of the contributory negligence of the deceased after making an appropriate deduction which can reasonably be fixed at 25%, the compensation amount payable by the Corporation can be fixed at rupees three lakhs including the amount awarded by the Tribunal and confirmed by the High Court for loss of expectation of life. Interest at the rate as awarded by the High Court is maintained from the date of application for compensation.”

13) From the above-quoted paragraph 12 of the Apex court judgment in the case of Laxman Iyer (supra) it is apparent that as the father of the deceased, in that case, was employed and had his own earnings, the Apex Court held that the multiplier of 10 was appropriate in that case.

14) Coming to the evidence in the present case, the father of the deceased P.W.1 Ramesh Chandra Sharma has stated on oath as under:

esjk yMdk iRFkj dk dke VkuIiksVZ dk dke djrk Fkka e`R;q
ds le; mldh mez „^ o"kZ FkhA eS Mk;foVht dk ejht gwWA jkstkuk

bulqfyu yrsk gwWA esjh iRuh dks CyM iza”kj gSA jktho ds
vykok gekjk vkSj dksbZ ns[kus okyk ugha FkkA jktho f,,&
f‡ gtkj #l;k eghuk dek yrsk FkkA vk;dj nsrk FkkA nq?kZVuk ejs
lkeus ugha gqbZ Fkh A

14) From the above statement it is clear that the claimants are ill and not doing any work. They were fully dependent on the income of the deceased. Thus considering the entire circumstances of the case, we are of the opinion that the multiplier of 12 is just and proper. Thus by multiplying the annual dependency of Rs.50,000/- by 12 the compensation comes to $50,000 \times 12 = \text{Rs.}6,00,000/-$. A sum of Rs. 2,000/- for funeral expenses and Rs.2,500/- for loss of estate is also awarded to the claimants and thus the total compensation comes to Rs.6,04,500/-.

15) The above compensation has been worked out keeping in view the observations made by the Apex Court in the case **T.N. State Transport Corporation Ltd. Vs. S. Rajapriya and others. (2005) 6 SCC 236**. In paragraph 10 it has been observed as under:

“10. Much of the calculation necessarily remains in the realm of hypothesis “and in that region arithmetic is a good servant but a bad master” since there are so often many imponderables. In every case “it is the overall picture that matters”, and the court must try to assess as best as it can the loss suffered.”

16) *Apart from that we also award pendente lite and future interest @ 6% per annum.*

17) The appeal is, therefore, allowed. The compensation of Rs. 9,49,500/- awarded by the Claims Tribunal is reduced to Rs. 6,04,500/-. The appellants are also entitled to get pendente lite and future interest @ 6% on that amount.

17) The amount deposited in this court be remitted to the Claims Tribunal concerned.

18) No order as to costs.

(Rajesh Tandon, J.)

(Rajeev Gupta, C. J.)

Dated: November 9, 2006

*Dhyani